IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1162 OF 2004

Prabhu Anant Lungase and Anr. ..Appellants

Versus

Pralhad Hanmant Kambale and Ors. ..Respondents

Shri N.P.Shimpi for appellants

Shri A.A.Kumbhakoni for Respondents

CORAM : P.V.KAKADE,J.

DATE : 20TH OCTOBER, 2004

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The appellants have preferred this appeal against the judgment and order passed by the District Judge,

Solapur on 8.4.2004 dismissing appeal and confirming the order passed by Civil Judge, Junior Division, Madha dated 17.7.2000 dismissing the Suit (Reg. Civil Suit No.261 of 1996).

3. The plaintiffs filed the suit for specific performance of contract. The learned trial judge adjudicated the dispute on merits and came to the conclusion that there was an agreement between the parties dated 27.5.1968 wherein the defendant had agreed to sell the suit land under Gat No.75 and the plaintiffs had to pay an amount of Rs.2500/= and subsequently Rs.300/= towards the earnest money. However, it was held that entire consideration amount was not paid by the plaintiff and the suit held to be barred by law of limitation and as such held that the plaintiff was not entitled to specific performance of the contract though they were in possession of the suit property by virtue of their tenancy rights since prior to the suit agreement. The appeal was carried to the District Court. The learned District Judge endorsed the findings recorded by the learned trial judge holding that plaintiffs have not proved that they were ready and willing to perform their part of the contract, and that

the suit was barred by law of limitation. Hence the present appeal.

4. At the outset it may be noted that the leaned counsel for the appellant vehemently urged that the suit is held as barred by law of limitation on the ground that the suit agreement stipulated that the sale deed was executed within one year from the execution of the agreement on 27.5.1968. The lower appellate court judge held that since the specific date was fixed for execution of the sale deed in the agreement for sale, the sale brought after 28 years of agreement was certainly barred by law of limitation. Hence the appeal came to be dismissed.

5. In this regard the learned counsel for the respondent sought to put reliance on the ruling of the Supreme Court in the case of K.S.Vidyanadam and Ors. vs. Vairavan - (1997) 3 Supreme Court Cases, wherein it is held thus -

> "10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale

relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation act for filing a suit is three years. From these two circumstances, it does not follow tat any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is fled within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both section 10 and 20. As held by a Constitution Bench of this court in Chand Rani v. Kamal Rani (SCC

p.528, para 25)

> "..... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?) : (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract."

Therefore, in view of this aspect and applying the ratio laid down by the Supreme Court in the case of **KONDIBA DAGADU KADAM VS. SAVITRIBAI SOPAN GUJAR & ORS. AIR 1999 (3) SUPREME COURT 2213** to the effect that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of the Civil Procedure Code, the present appeal deserves to be dismissed and stands dismissed with no order as to costs.